



For a thriving New England

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September 17, 2013

BY ONLINE FORM

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
(617) 918-1102

Re: Freedom of Information Act Request for Records Pertaining to Plans Developed Under the Clean Water Act for the Commonwealth of Massachusetts

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") to the Environmental Protection Agency ("EPA") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of the Conservation Law Foundation, Inc. ("CLF"). A detailed description of the information requested by CLF and justification for a fee waiver follow.

Definitions

Consistent with 5 U.S.C. § 552(f)(2), the term "records" includes any and all reports, statements, memoranda, analyses, designs, maps, photographs, videotape, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, operations logs, work orders, notes, equipment purchase receipts, fuel purchase receipts, contracts, meeting minutes, engineering specifications, fuel shipment records, monitoring data, calendars, project schedules, emissions calculations, process modeling, emissions modeling, financial records and analyses, safety records, maintenance records, proposals, graphs, and other data representations.

The term "communications" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written correspondence (including facsimiles and e-mail), and any records of printed, facsimile, telephonic, electronic, or other forms of communications, including documents that memorialize or refer to any such communications.

Records Requested

CLF requests all records and communications that are in the possession, custody, or control of EPA, including any officers, divisions, or bureaus thereof, pertaining to:

- 1) Plans that make reference to any location or area within the Commonwealth of Massachusetts developed under the Clean Water Act ("CWA") § 205(j), 33 U.S.C. § 1285(j);
- 2) Plans that make reference to any location or area within the Commonwealth of Massachusetts developed under CWA § 208, 33 U.S.C. § 1288;
- 3) Plans that make reference to any location or area within the Commonwealth of Massachusetts developed under CWA § 303(e), 33 U.S.C. § 1313(e);
- 4) Plans that make reference to any location or area within the Commonwealth of Massachusetts developed under CWA § 319, 33 U.S.C. § 1329;
- 5) Plans that make reference to any location or area within the Commonwealth of Massachusetts developed under CWA § 320, 33 U.S.C. § 1330.

If EPA maintains that any Record within CLF's Request is exempt from disclosure in whole or in part, please identify with particularity (identifying the sender or author, recipient and date) each Record claimed to be exempt from disclosure, and detail the justification for the claimed exemption. See 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. §2.104(h). CLF further requests that EPA release all segregable portions of material that EPA claims is otherwise exempt.

Fee Waiver Request

The FOIA and EPA's regulations provide that records will be furnished at reduced or no charge when disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1). Consistent with the fee waiver provisions of FOIA and EPA regulations, CLF seeks the requested information in order to ascertain the status of plans related to water in the Commonwealth of Massachusetts.

For the reasons described below, CLF's intended uses of these documents are in furtherance of the public interest in understanding and protecting water quality and health in Massachusetts, and meet the applicable criteria and guidelines established by federal law and regulations for a fee waiver.

- 1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.**

The subject of the request clearly concerns the operations and activities of the government, specifically, the activities of EPA with respect to review and/or approval of plans prepared pursuant to the Clean Water Act by the Massachusetts Department of Environmental Protection ("DEP") or other state or local governmental bodies.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

CLF's request relates to the substantive and procedural standards applicable to plans developed under various sections of the Clean Water Act. Since EPA communication with DEP is a crucial step in the process to review and/or approve these plans, records of correspondence between EPA and DEP are likely to contribute to an understanding of the standards applicable to EPA's action with regard to such plans. It is necessary to supplement information available from public databases with a complete record of the information, opinions, and communications of EPA and DEP to ensure a full understanding of the applicable standards for plans developed pursuant to the Clean Water Act.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.

CLF is a nonprofit, member-supported legal and policy advocacy organization which employs advocates with expertise in many fields, including the Clean Water Act and protection of water resources. Across five New England states, CLF employs approximately twenty advocates with advanced professional degrees and experience in law, economics, resource management, and science. As described above, CLF has played a critical role in the preservation and enhancement of water quality in Massachusetts and New England as a whole, and has been a leader in addressing the environmental problems posed by water pollutant emissions. Plans developed by states pursuant to the Clean Water Act and subject to the review and/or approval of EPA, and communications making reference to those plans, contain important information about water quality in water bodies essential to the health and economy of local communities. CLF seeks the requested documents and communications because they will assist our staff to describe and explain to the public at large the legal and technical aspects of actions the Clean Water Act requires EPA to undertake to protect water quality.

CLF routinely communicates with the public through the media, by providing comments at public hearings, speaking at conferences and to community groups, and preparing information summaries and communications materials to educate the public about the health and environmental impacts of degraded water quality. CLF also uses its blog, the CLF Scoop (<http://www.clf.org/blog/>), to disseminate editorial content created by many of CLF's experienced attorneys and advocates on important topics in environment, energy, and public health. Through these and other avenues, CLF will use the information from the



requested documents to further its mission to educate the people of Massachusetts about threats to their health and the environment and the legal mechanisms available to address those threats.

Upon receiving the requested documents, CLF will be able to review the information, communicate with decision-makers and the public about water quality in Massachusetts and EPA's statutory responsibilities with respect to protection of water quality, and more fully evaluate aspects of the water quality plan review and approval process. CLF seeks the requested documents in order to develop a full and accurate portfolio of information about EPA's responsibilities with respect to water quality plan review and approval, the development of plans required under the Clean Water Act, and various options for solutions to water pollution problems. In seeking to understand this "full picture," CLF also seeks to access and evaluate the information that has been considered by EPA and Massachusetts in developing and approving plans under the Clean Water Act.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

The public's understanding of the subject in question, plans developed to protect water resources in the Commonwealth of Massachusetts and EPA's actions pertaining thereto, will be enhanced significantly by disclosure of the records and communications referenced in this Request, because there is little to no current public awareness of the existence of these plans and their intended role under the Clean Water Act.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

CLF has no commercial interest that would be furthered by this request. CLF is a tax-exempt 501(c)(3) corporation, has no parent corporation, and is not a corporation in which any person or entity owns stock. CLF will not derive income or other benefit from use of the requested information.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

See response to #5.

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CLF reserves the right to appeal a decision to withhold any information or to deny a waiver of fees. I look forward to your response to this Request within twenty (20) business days of receipt, in accordance with 40 C.F.R. §2.104(a).

Thank you for your assistance with this Request. Should you have any question, please contact me by phone at 617-850-1770 or by email at cpeale@clf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Peale", is written in a cursive style.

Caitlin Peale
Staff Attorney
Conservation Law Foundation